

RSC ELECTRONIC ACCESS LICENCE AGREEMENT

COMPANY AGREEMENT – FREE ACCESS

This Agreement is between The Royal Society of Chemistry ("Publisher") and the commercial organisation which has been granted free access to RSC information ("Customer").

WHEREAS

- (A) Publisher holds journal articles, book chapters, and databases in electronic form;
- (B) Customer wishes to license access to journal articles, book chapters and/or databases; and
- (C) Publisher agrees to grant such licence.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Definitions

In this Agreement the following terms shall have the following meanings:

- "Authorised Users" means current employees of the Customer and consultants engaged by the Customer at Customer Sites who, in either case, have been allowed access to Publisher Content by Customer, such access to be by Secure Authentication;
- "Customer" means a commercial organisation at Customer Address.
- "Customer Site" means the site(s) of the Customer.
- "RSC Electronic Content" means Publisher periodicals, books and databases held in electronic form by Publisher.
- "Secure Authentication" means access to Subscription by Internet Protocol ("IP") ranges or by a username and password provided by Publisher to Customer or by another means of authentication agreed between Publisher and Customer.
- "Subscription" means the RSC Electronic Content being made available free of charge to Customer..
- "Visually Impaired Person" means a person who is blind; who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without special level or kind of light; who is unable, through physical disability, to hold or manipulate a book; or who is unable, through physical disability, to focus or move his/her eyes to the extent that would normally be acceptable for reading;

2. Licence

Subject to the terms and conditions set forth in this Agreement, Publisher hereby grants to Customer the non-exclusive and (subject to Clause 14 below) non-transferable right and licence to use Subscription.

- 2.1 Publisher licenses Customer to access and use Subscription through Publisher's website at Customer Site.
 - 2.1.1 Neither Customer nor Authorised Users may make available or distribute any part of Subscription on any other network.
 - 2.1.2 Access must be by means of Secure Authentication.
- 2.2 Publisher licenses Customer to provide access to Subscription via means of Secure Authentication to Authorised Users so that these users may access and use Subscription in accordance with the terms of this Agreement.

- 2.3 Publisher licenses Customer to re-engineer Subscription at Customer Site to provide suitable format(s) such that Authorised Users who are Visually Impaired Persons may have access to Subscription.
- 2.4 Publisher licenses Customer to use Subscription for regulatory purposes at Customer Sites, including but not limited to including extracts from Subscription in regulatory submissions to regulatory authorities and electronic storage thereof in perpetuity for later retrieval and submission, provided that such regulatory purposes do not amount to commercial redistribution for direct profit.
- 2.5 Publisher licenses Customer to make such back-up copies of Subscription at Customer Site as are reasonably necessary to give effect to its rights and obligations under this Agreement.
- 2.6 If Customer wishes to make any other use of Subscription or to carry out any other activity related to Subscription that is not explicitly mentioned above in this Clause 2 or set out in Clause 5, Customer must obtain prior written permission from Publisher.

3. Payment

There is no charge for Customer access to Subscription.

4. Copyright and Ownership

- 4.1 Subscription is copyright and is subject to all applicable copyright, database protection, and other rights of the copyright owner and Publisher. The names of the author(s) and the copyright notices may not be removed, obscured, or modified in any way. Customer shall take the same precautions to prevent theft or inadvertent illicit use of the intellectual property in Subscription that it takes to prevent theft of its own intellectual property. The relevant copyright notice must be displayed on all copies of information made from Subscription.

Acknowledgement of the form (where the copyright owner(s) to be used in the statement are available at www.rsc.org/journalscopyright):

- (i) "(original citation) – Reproduced by permission of The Royal Society of Chemistry"; or
- (iii) "(original citation) – Reproduced by permission of The Royal Society of Chemistry (RSC) on behalf of (the copyright owner) and the RSC";

must appear on such material in a position and typeface as to be clearly visible to the reader.

- 4.2 Customer acquires no intellectual property rights in Subscription and all such rights remain with the copyright owner.
- 4.3 Customer shall abide by Publisher's Terms and Conditions as set out in Clause 5 (also available on Publisher's website(s)). Customer shall make all reasonable efforts to distribute these Terms and Conditions to Authorised Users to make them aware of Publisher's Terms and Conditions. Notwithstanding Clause 13, and subject only to Publisher giving Customer thirty (30) days prior notice, Publisher's Terms and Conditions are subject to change at any time at the discretion of Publisher.
- 4.4 Each party shall use its best endeavours to safeguard the intellectual property and proprietary rights of the other party.

5. Authorised Uses

- 5.1 Authorised Users of Subscription are permitted to:
- 5.1.1 search, retrieve, display, and view information from Subscription;
- 5.1.2 copy (including printing and downloading) from Subscription and retain it as long as required for use by the Customer. Authorised Users may copy (including printing and downloading) information from Subscription and retain it as long as required for their own personal non-commercial use;
- 5.1.3 store information from Subscription electronically, provided the use is consistent with the other terms and conditions described in this Agreement; and
- 5.1.4 include information from Subscription (for example, a figure, diagram or chart) in a

presentation or in a published work provided permission has been sought and obtained from Publisher in advance, except as permitted in accordance with fair use/fair dealing principles. Details of the RSC's procedures for processing permission requests can be found on the RSC's website at www.rsc.org/permissions. The material must carry the relevant credit, as specified in Clause 4.1.

5.2 If Authorised Users wish to gain permission from Publisher to carry out any other activity not explicitly mentioned above, they must obtain prior permission from Publisher. Details of the RSC's procedures for processing permission requests can be found on the RSC's website at www.rsc.org/permissions.

5.3 **Prohibited Use.** Customer and Authorised Users of RSC Electronic Content shall not use any automated program, including without limitation webcrawlers, to access RSC Electronic Content. Such activities may have a detrimental effect on RSC Electronic Content or access thereto, and they are strictly forbidden.

6. Access to and Availability of Subscription

6.1 Customer's access to Subscription shall be via Secure Authentication.

6.1.1 Customer's access to or the provision of access to Subscription shall be by IP authentication. Customer shall ensure that the IP range allows access only by Authorised Users. Customer shall only offer a proxy, or firewall, IP that will allow Authorised Users access to Subscription. It is the responsibility of Customer to verify that any IP address will only allow such access

6.1.2 Where Customer does not have the technical facilities to comply with 6.1.1, Publisher may, at its sole discretion, permit Customer to access or to provide access to Subscription using assigned username and password. In such cases, Customer shall be responsible for ensuring that the username and password are provided to Authorised Users only. Customer shall not pass on or put the username and password in a place where they can be accessed by anyone other than Authorised Users (for example, put on a website).

6.2 Publisher shall use its reasonable endeavours, subject to any reasonable periods of planned downtime or maintenance, to make Subscription available to Customer 24 hours a day, 7 days a week. In the event of any unplanned downtime or unavailability of the Subscription for any reason, whether through the fault of Publisher or otherwise, Publisher's sole responsibility shall be to use its reasonable endeavours to restore access to Subscription as soon as reasonably practicable and Publisher shall have no liability to Customer for such interruption to access.

6.3 Publisher reserves the right to change the format of or the hosting service for Subscription.

6.4 Customer's access to Subscription is at all times subject to compliance with the terms of this Agreement.

7. Access to Subscription upon Termination

7.1 Where, following termination of this Agreement as set out below, Customer's access to Subscription continues, it shall be subject to Customer abiding by those terms of this Agreement that are relevant to such access. Such terms shall continue to have effect for the duration of Customer's access, and Customer hereby acknowledges and agrees that if Publisher reasonably believes Customer is in breach of such terms, Publisher may at any time terminate Customer's access.

7.2 Upon termination under Clause 8.3 or 8.4, or termination by Customer under Clause 8.1, Publisher shall provide continuing access to Customer to the articles from Subscription. Customer shall continue to have the rights granted in this Agreement with respect to Subscription, provided Customer abides by Publisher's Terms and Conditions in force at the time. Access shall be via Publisher's server.

7.3. Upon termination of the Agreement by Publisher under Clause 8.1 or 8.2, Publisher shall immediately remove Customer access to Subscription.

8. Termination

8.1 If either party shall fail to observe or perform any one or more of its obligations hereunder, either

party may request the other by notice in writing, specifying the default, to remedy the default (if remediable) within thirty (30) days of notice, and if such remedy has not been completed within the said thirty (30) day period, or if no remedy is possible, the non-breaching party may terminate this Agreement forthwith.

- 8.2 If Publisher becomes aware that Customer is in material breach of this Agreement and reasonably believes such breach is likely to cause serious financial, operational or reputational loss to Publisher, Publisher may temporarily suspend Customer's access to Subscription to the Customer Site that is responsible for the breach and notify Customer in writing as soon as reasonably practical.

Customer shall have thirty (30) days from receipt of written notice from Publisher in which to remedy the breach. Once the breach has been remedied to Publisher's satisfaction or the breaching activity halted, Publisher shall promptly reinstate access to Subscription.

If Customer does not satisfactorily remedy or halt the breaching activity within thirty (30) days, Publisher may terminate this Agreement with immediate effect upon written notice to Customer.

Publisher may terminate this Agreement if Customer has persistently and materially breached this Agreement, irrespective of whether such breaches were later remedied, which shall be deemed to occur if Customer materially breaches this Agreement three (3) or more times during any twelve (12) month period during which the Agreement is in force.

- 8.3 Either party shall have the right to terminate this Agreement summarily upon notice to the other upon the other committing an act of bankruptcy or having a receiver or liquidator appointed over its assets except for the purposes of amalgamation or reconstruction.
- 8.4 Termination of this Agreement for whatsoever reason shall be without prejudice to the right of the parties to claim damages for any previous breach.
- 8.5 Termination of this Agreement (howsoever arising) shall not affect the rights of either party accrued prior to termination and any provision of this Agreement which needs to survive termination of this Agreement in order to give full effect to its meaning shall do so.

9. Warranties and Liabilities

- 9.1 Publisher hereby warrants to Customer that it has full power to enter into and perform this Agreement and that so far as it is aware Subscription does not violate or infringe any existing copyright, licence or third-party rights.
- 9.2 Customer hereby warrants to Publisher that it has full power to enter into and perform this Agreement.
- 9.3 Publisher shall use reasonable endeavours to ensure that Subscription is accurate, error-free and uncorrupted, but Publisher accepts no liability whatsoever for any loss, claim or damage or any nature, whether direct, indirect, consequential or special (including without limitation, legal fees) suffered or incurred by Customer and alleged to be caused by:
- (i) omissions or errors in the Subscription or their consequences; or
 - (ii) faults in or corruption of Subscription or their consequences, including but not limited to any defects caused by or during the transmission of Subscription across the Internet or by the processing of Subscription by Customer.
- 9.4 Nothing in this Agreement shall limit or exclude the liability of either party to the other for death or personal injury caused by its negligence or that of its employees, servants or agents.
- 9.5 Subject to Clauses 9.4 and 9.6, in the event that Customer makes a claim against Publisher for whatever reason, Publisher's liability (if any) shall be limited to restoring access to Subscription as soon as reasonably practicable and Publisher shall have no other liability for such cessation of access. Under no circumstances shall Publisher be liable for any consequential, indirect or special losses howsoever arising or for any loss of profits, revenue, interest, goodwill, business and/or savings (whether direct or indirect).
- 9.6 Publisher shall indemnify and hold Customer harmless from and against any direct loss, damage, cost, liability or expense (including reasonable legal and professional fees) arising out of any legal action taken against Customer by a third party claiming Subscription is in actual or alleged

infringement of their intellectual property rights. This indemnity is subject to (a) the Customer promptly notifying the Publisher of any claim or action, (b) the Publisher having sole control of such claim or action, and (c) the Customer not making any admission of liability or agreeing to settle or compromise the claim or action. This indemnity shall survive the termination of this Agreement for any reason. This indemnity shall not apply if Customer has amended Subscription in any way to the extent that such amendment is the cause of the infringement.

- 9.7 If Publisher becomes aware of any item or part of an item in Subscription for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable, it shall use reasonable efforts to make the item or part of an item acceptable to remain in Subscription. If this is not reasonably practicable, Publisher reserves the right at any time to withdraw from Subscription any such item or part of an item. Publisher shall give written notice to Customer of such withdrawal as soon as reasonably practicable.
- 9.8 Nothing in this Agreement shall make Customer liable for breach of the terms of this Agreement by any Authorised User provided that Customer did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

10. Entire Agreement

- 10.1 This Agreement, together with the associated information relating to Subscription and Secure Authentication, embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement which is not expressly set forth in this Agreement.
- 10.2 No failure to delay on the part of either party hereto to exercise any right or remedy under this Agreement shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

11. Severability

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12. Binding Agreement

This Agreement shall be binding upon and inure to the benefit of both parties hereto and their respective successors and permitted assignees.

13. Alteration of Agreement

This Agreement, including the associated information relating to Subscription and Secure Authentication, may be amended only in writing signed by duly authorised representatives of the parties. Either party requiring an amendment shall give the other party thirty (30) days' notice of any change to the Agreement. Continued use of Subscription by Customer after notification of such changes shall be deemed to be acceptance of the changes by Customer.

14. Assignment

- 14.1 Customer may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Publisher, such agreement not to be unreasonably withheld.
- 14.2 If rights in all or any part of Subscription are assigned to another publisher, Publisher shall use its best endeavours to ensure that Customer may continue to have access to the Subscription which is the subject of this Agreement.

15. Notices

Every notice to be given under this Agreement shall be in writing and either sent by pre-paid first class or registered letter, delivered by hand or sent by facsimile or, in the case of the Customer, sent by email (to inl_licences@rsc.org). Notice sent by post shall be deemed to have been given ten (10) working days after

the date of posting. Notices delivered by hand, facsimile or email shall be deemed to have been given on the day they are delivered, unless delivery occurs outside the normal working hours of the recipient, in which case delivery shall be treated as having occurred on the next working day.

16. Force Majeure

Neither party shall be responsible for any failure or delay in the performance of its obligations under this Agreement because of circumstances beyond its reasonable control.

17. Confidentiality

- 17.1 Both parties shall keep the terms of this Agreement strictly confidential, with the exception of Clause 5, and shall not disclose same except to the extent any disclosure is required by law, or court or administrative or regulatory body of competent jurisdiction.
- 17.2 Publisher retains server logs which contain detailed Customer and Authorised User access information including without limitation date and time of access, details of the Secure Authentication employed and specific file name and type downloaded from Subscription. This access information may be used by Publisher and its agents only for Publisher's internal purposes including management information reporting, monitoring and enforcement of Customer's access, and Customer support purposes. Publisher shall use its best endeavours to keep confidential from third parties this access information and these usage statistics. Publisher and Customer shall each comply with the requirements of any data protection legislation currently in force and applicable to them.

18. Headings

The headings in this Agreement are for convenience only and shall not affect its interpretation.

19. Miscellaneous

- 19.1 Rights of Third Parties. The parties hereby confirm that no provision of this Agreement shall or shall purport to confer on any third party any right to enforce any term of the Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999.
- 19.2 Usage Statistics. For Customers accessing Subscription by Internet Protocol ("IP") ranges, Athens or Shibboleth, Publisher will provide Customer with access to usage statistics compliant with the latest release of the Project COUNTER Code of Practice (www.projectcounter.org). These statistics will cover all Journals.

20. Dispute Resolution

Any difference arising between the parties shall initially be submitted to a mediation procedure in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Should the mediation be unsuccessful, neither party is precluded from instigating legal proceedings under Clause 21.

21. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of England irrespective of the place of its physical execution and the parties hereto hereby submit to the exclusive jurisdiction of the English courts in respect of any contractual and non-contractual disputes arising out of or in connection with this Agreement.